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#12

9/15/03
B. Ross



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Reg. No. 32,285

In re application of:
Pohrer

Serial No.: 09/692,641

Examiner: Aryanpour, Mitra

Filed: October 19, 2000

Group Art Unit: 3711

For: *HEIGHT-ADJUSTABLE
VOLLEYBALL NET AND STANDARD
SYSTEM AND METHOD*

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APPLICANT'S REPLY BRIEF

Broadly stated, applicant's claimed invention is a method of changing the height of a highly tensioned volleyball net cable without reducing the net tension below a net-supporting tension. The claims define the net-supporting tension as a tension which is sufficiently great that the elevation of the first and second ends of the net's upper edge margin does not exceed the elevation of the mid-point of the net's upper edge margin by more than approximately $\frac{3}{4}$ " (2 cm) when the first and second ends of the net's upper

edge margin are at approximately the same elevation. As claimed, the net-supporting tension is that tension required to play a regulation game of volleyball.

The prior art references cited by the Examiner (i.e., the Koole and Burns patents) do not disclose or suggest raising or lowering post sections of net standards while a net cable is highly tensioned. The Examiner acknowledges that the Koole patent "infers tension adjustment after height adjustment." Examiner's Answer, p. 9. The Examiner essentially argues that even though the cited prior art does not teach or suggest the method step of height adjustment of a highly tensioned net, a *prima facie* case of obviousness is established merely by showing prior art structure capable of performing the method. The Examiner's argument is incorrect. All of the claim limitations must be taught or suggested by the prior art to establish *prima facie* obviousness. MPEP 2143.03; *In re Royka*, 490 F.2d 981 (C.C.P.A. 1974). Because the method limitations are not disclosed or suggested by the prior art, the Examiner has not established a *prima facie* case of obviousness.

The Examiner has not even established that the Koole structure is capable of performing the method. Rather than establish that the Koole structure is capable of performing the claimed method, the Examiner argues that applicant's disclosed structure is not capable if the Koole structure is not capable. Examiner's Answer, p. 8 ("If the tension is so great that one could not pull on the handle, one could argue that the same would also be true for the present invention."). The examiner's argument is incorrect. Koole discloses a mere handle fixed to the upper pipe section to enable a user to raise or lower the upper pipe section. The Examiner does not show that a user could pull or push on the handle with sufficient force to move the upper pipe section

incorrect

when the net cable is tensioned to the extent required by applicant's claimed invention.

It would be especially difficult to use the Koole device to make the specific height adjustments required by claims 9 and 19 (from about 7 feet, 11 5/8 inches to about 7 feet, 4 1/8 inches) and 20 (from about 7 feet, 4 1/8 inches to about 7 feet, 11 5/8 inches). Unlike the Koole patent, the present patent application describes structure capable of performing the claimed method steps and capable of making the fine adjustments required by claims 9, 19 and 20.

Inventor(s)

In addition to showing prior art structure capable of performing the method, a prima facie case of obviousness requires the examiner to provide prior art teaching or suggestions for performing applicant's claimed structure. The prior art cited by the examiner lacks a teaching or suggestion for varying the height of volleyball net standards while maintaining a net-supporting tension as required by applicant's claimed method. Rather than teach or suggest tensioning a net-supporting cable and then varying the height of volleyball net standards, the Koole patent only suggests telescoping the net standards to a desired height and then attaching a net to the standards¹. The Koole patent defines a "condition ready for use" as an "extended condition" of the volleyball post "in which the game net could be attached to the post." Koole Patent, column 1, lines 20-22. The Koole patent describes moving the outer pipe from a "storage position" to a "position ready for use." Koole Patent, column 2, lines 18-20. Since the position ready for use is defined by Koole as the extended position in which the game net can be attached to the post, then Koole's disclosure of moving the

¹ The examiner questioned applicant's assertion that the Koole patent only indicates height adjustment of the net standards when the net is not attached to the net standards. Although applicant cited to the relevant portions of the Koole patent in Applicant's Brief on Appeal to support his assertion (Appeal Brief, p. 10-11), applicant's assertion is reasserted and supplemented here to address the examiner's question.

outer pipe from a "storage position" to a "position ready for use" means that the Koole net is not attached to the post during such movement of the post. The Koole patent also discloses that the outer tube and the inner tube are in one specific orientation relative to each other in the "condition ready for use," i.e., when the net is attached to the post. Koole Patent, column 5, lines 25-30. Moreover, the Koole patent discloses a spring system within the post to counterbalance the weight of the moving part of the post. Koole Patent, column 5, line 31 to column 6, line 2. The Koole patent explains that because of the spring system a user need only apply a small force to urge the upper tube upwardly and need only apply a small force to urge the upper tube down to its storage position. Koole Patent, column 5, line 52 to column 6, line 2. Because Koole describes the Koole post as requiring only small forces to move the upper tube up and down, Koole's net cable cannot be tensioned to the extent required by applicant's claimed method. After all, small forces would be sufficient to move the upper tube up and down only if the net cable is not tensioned. Because the cited prior art does not disclose or suggest applicant's claimed method, the examiner has not set forth a prima facie case of obviousness.

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Invention

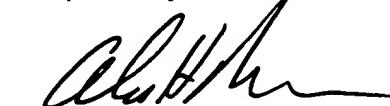
As to claim 5 on appeal, the examiner asserts that "the Burns reference was used to demonstrate that nets having crank operated upper and adjustable lower sleeves are well known." Examiner's Answer, p. 9. Although the Burns patent discloses a crank, the Burns crank does not vary the height of an upper sleeve relative to a lower sleeve. With the mechanism described in the Burns patent, the upper and lower sleeves are fixed relative to each other during operation of the crank. The Burns

crank is used to tension the net cable. Thus, Burns is not at all relevant to applicant's claim 5.

Applicant's claim 6 requires a drive mechanism operable to move the upper post section between its raised and lowered position and requires the step of operating the drive mechanism. The examiner asserts that Koole's handle 4 and untying knob 5 constitutes a drive mechanism as required by claim 6. The Koole handle 4 is merely a handle fixed to the Koole upper pipe. The Koole untying knob 5 is a set screw to lock the upper pipe relative to the lower pipe to prevent relative telescoping movement. The handle is not a drive mechanism in any sense of the term. Operating the Koole untying knob locks or unlocks the upper and lower pipes, but does not move the upper pipe at all. Thus, contrary to the examiner's assertion the Koole handle and untying knob do not constitute a drive mechanism as required by applicant's claim 5.

For the reasons discussed above and for the reasons discussed in Applicant's Brief on Appeal, the examiner's rejections of claims 1-10, 19 and 20 should be reversed.

Respectfully submitted,



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Pohrer

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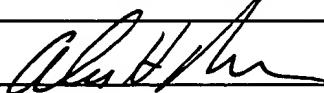
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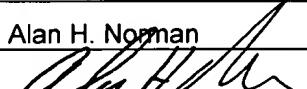
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